

Ever closer Union... are you serious?

Part I

Gastautor

2016-04-19T08:00:28

Von [EVA RADLGRUBER](#) und [LORIN-JOHANNES WAGNER](#)



When

Lorin and I set out writing these little blog entries we initially thought about writing about the unchangeable nature of British demands in the wake of the ongoing Brexit debate. It, however, soon emerged that Lorin and I were much more interested in a detail that so far has gained little attention. And despite all our best intentions to keep true to our promise to write about something else, here are a few words on all we ever wanted to say about changing the ever closer union.

The term Brexit is one of those which leaves most European Union Law lawyers in shivers, as David Cameron's famous "Dear Donald" (Tusk) letter and the following renegotiation deal on the UK's EU membership leave many (legal) questions unanswered and somewhat open Pandora's box. One of the most striking points to us in the package of changes was the "ever closer union" demand of the British Prime Minister. The letter reads that 'David' "want[s] to end Britain's obligation to work towards an 'ever closer union' as set out in the Treaty [...] [He] want[s] to do this in a formal, legally-binding and irreversible way". Between the lines one ought to smell the fear of being bound up in an ever closer political union in Europe, linking ever closer union to a United States of Europe. The overall resonance on the Treaty commitment is, however, that it is merely symbolic and has no legal character. So why opt out of a non-legally binding concept? Surely, it serves as a pleasing gesture to British Eurosceptics by seemingly taking Britain's membership back towards its original motivation – the common market. But, how different can the paths of integration be for the Member States in order to still take the same journey?

The long and winding road towards British integration – old habits die hard

The ambition for an [“ever closer union among the peoples of Europe”](#) made its debut in the preamble of the 1957 Treaty of Rome, the founding Treaty, in a time when the UK was not considering joining this newly emerging organization. After coming to terms with the fact that without becoming part of the Union the British economy might suffer for too long, the UK handed in their accession application. The ten year evaluation period, mostly due to French hesitation over the unconventional customs and traditions of the island, found its end in 1973 when the UK acceded to the Economic Community by signing the Treaty including the ‘ever closer union’ commitment. As one of the strange British traditions is Euroscepticism, the 1975 referendum over British Membership was hardly surprising. What does strike the eye though, is the fact that the campaign from the British government for the UK’s new deal in Europe set out [“to bring together peoples of Europe”](#) as one of the main aims of the common market. Giving the current discussion this could be called ironic. After 60% of the British voted to stay, the UK became part of the EU by taking the indirect route. From Wilson over Heath to Thatcher, who famously wanted her money back, the roadmap stayed the same: the Brits always needed special treatment and got it. Thatcher’s UK rebate, Major’s not joining the Monetary Union, Blair’s fight against the Constitution Treaty and the Treaty of Lisbon, Brown’s not signing the Fundamental Rights Charter, all led us to today: Cameron’s Brexit ‘threat’. Regarding the “ever closer union” commitment only Tony Blair revolted when negotiating the Constitutional Treaty in which it was not entailed, but after it was reintroduced into the Treaty of Lisbon the UK signed nonetheless. The UK has always taken different paths towards reaching a commonly accepted destination, or let’s say, at least the ‘Banlieues’ of that destination. With the EU’s guiding principle of European integration this will seemingly change.

About the significance of ‘ever closer union’ – a road to nowhere?

As mentioned above, ‘ever closer union’ is a phrase of long standing tradition. In the current EU Treaties the term is mentioned three times. It appears in the preambles of the TEU (Treaty of the European Union) and the TFEU (Treaty on the Functioning of the European Union) as well as in Article 1 TEU. Apart from that it can also be found in the preamble of the Fundamental Rights Charter. It is important that the term is read as a whole: “ever closer union among the peoples of Europe”. Therefore, it addresses the people not the governments, which drives its intention away from creating a political European super-state. The wording admittedly is rather scarce, and common perception among political leaders and lawyers alike is that it is just a nice phrase with no legal weight whatsoever, and definitely [no obligation to political integration](#) that could be enforced by EU courts. Well, is that really the case? When analyzing the European Court of Justice’s (ECJ) jurisprudence a few conclusions can be drawn to support that claim. The ECJ never defined ‘ever closer union’, but references can be found in just over 50 judgments since 1999. The citations in the judgments are of no material significance to the outcome of these cases.

We agree that this is hard evidence for the legal insignificance of the ‘ever closer Union’ clause, but one ought to look twice when it is about the ECJ and its way of interpretation. More than an urban myth is the perception that the interpretation of the Treaties through the Court is based on the spirit of the Treaties. It is not how you do it, it’s what you have in mind when you do it, kind of. This can be backed up with the words of Judge Mancini, an influential intellectual leader within the Court in his time, when [he refers](#) to ‘ever closer union’ as a primary aim of the Treaty. The current President of the ECJ, [Koen Lenaerts](#), [underpins](#) this when saying that whatever people think at first glance, the process of European integration is deepening at remarkable speed. So even when the conclusion of the UK renegotiation reads that “[t]he references in the Treaties [...] to the process of creating an ever closer union among the peoples of Europe do not offer a legal basis for extending the scope of any provision of the Treaties or EU secondary legislation”, who is to say what the wind of change breaths into the spirit of the Treaties?

To be or not to be – together

How can this overarching aim of creating an ever closer union be brought in line with the pick and choose game that the United Kingdom has been playing since the beginning? Well, frankly, it can’t. To say it in a Thatcherism, from the UK’s point of view it seemingly is safe to say that there is no such thing as a political Union; it is just individual States and the European ‘family’(values). But once you are part of a ‘family’ you can’t choose your relatives, as we all know.

